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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Judith V. Brown,

No. CV-19-02889-PHX-DWL

Plaintiff,

ORDER

V.

NEWREZ LLC, et al.,

Defendants.

On May 7, 2019, Plaintiff Judith V. Brown (“Brown”) filed a complaint (Doc. 1) and request for temporary restraining order (“TRO”) without notice (Doc. 2) seeking to enjoin Defendants NEWREZ LLC and Bank of America NA (collectively, “Defendants”) from conducting a trustee’s sale on her residential property at 6259 Horseshoe Road, Paradise Valley, Arizona. The complaint alleges that Brown contacted Defendants for help negotiating a loan modification on her property and then made payments to Defendants totaling nearly \$20,000. (Doc. 1 ¶¶ 4, 7.) The complaint further alleges that none of these payments has been applied to her loan or forwarded to her “actual lender.” (*Id.* ¶ 8.) The complaint also alleges that a trustee’s sale is currently scheduled for May 9, 2019. (*Id.* ¶ 10.) Finally, in her accompanying TRO request, Brown argues that emergency relief is appropriate because she should be allowed to “stay in her home while her due process rights are heard regarding the payments received by Defendants purporting to be the servicer of her home loan.” (Doc. 2 at 2.)

A request for a TRO is analyzed under the same standards as a request for a

1 preliminary injunction. *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d
2 832, 839 n.7 (9th Cir. 2001). “A preliminary injunction is ‘an extraordinary and drastic
3 remedy, one that should not be granted unless the movant, by a clear showing, carries the
4 burden of persuasion.’” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (citation
5 omitted); *see also Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (“A
6 preliminary injunction is an extraordinary remedy never awarded as of right.”) (citation
7 omitted). A plaintiff seeking a preliminary injunction must show that (1) she is likely to
8 succeed on the merits, (2) she is likely to suffer irreparable harm without an injunction, (3)
9 the balance of equities tips in her favor, and (4) an injunction is in the public interest.
10 *Winter*, 555 U.S. at 20. “But if a plaintiff can only show that there are ‘serious questions
11 going to the merits’—a lesser showing than likelihood of success on the merits—then a
12 preliminary injunction may still issue if the ‘balance of hardships tips sharply in the
13 plaintiff’s favor,’ and the other two *Winter* factors are satisfied.” *Shell Offshore, Inc. v.*
14 *Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (citation omitted). Under this
15 “serious questions” variant of the *Winter* test, “[t]he elements . . . must be balanced, so that
16 a stronger showing of one element may offset a weaker showing of another.” *Lopez*, 680
17 F.3d at 1072.

18 Additionally, when a plaintiff requests a TRO *without* notice, as Brown does here,
19 two additional requirements are applicable. “The court may issue a temporary restraining
20 order without written or oral notice to the adverse party or its attorney only if: (A) specific
21 facts in an affidavit or a verified complaint clearly show that immediate and irreparable
22 injury, loss, or damage will result to the movant before the adverse party can be heard in
23 opposition; and (B) the movant’s attorney certifies in writing any efforts made to give
24 notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1).

25 Brown’s request for a TRO without notice will be denied. First, Brown has failed
26 to demonstrate why the Court should proceed without notifying Defendants. This isn’t a
27 case involving allegations that Defendants will destroy evidence, or engage in some other
28 form of surreptitious misconduct, unless they are first secretly enjoined from doing so. To

1 the contrary, Brown seeks to enjoin a public trustee's sale that has been planned for some
2 time. Moreover, and as discussed below, Brown was recently engaged in state-court
3 litigation with Defendant NEWREZ LLC's predecessor involving the same property.
4 Notice of Brown's request for preliminary injunction in that case didn't prompt the
5 defendants to engage in a clandestine sale of her property.

6 Second, Brown hasn't demonstrated a likelihood of success on the merits. Brown
7 fails to mention, in either her complaint or TRO request, that she filed a lawsuit in the
8 Maricopa County Superior Court (CV2018-010815) in August 2018 against various
9 defendants, including Bank of New York Mellon and New Penn Financial LLC (now
10 NEWREZ LLC), in an attempt to enjoin those parties from conducting a trustee's sale on
11 the same property at issue in this case.¹ In October 2018, the judge in the state-court
12 proceeding issued a lengthy order concluding Brown wasn't entitled to a preliminary
13 injunction because she hadn't established a likelihood of success.² Specifically, the court
14 found that "[a]ll of Plaintiff's claims for relief appear to be based upon the argument that
15 somehow, despite not making any payments on her mortgage since 2012, and eight years
16 into a 30-year mortgage, she is now absolved from making any future payments and may
17 continue to retain possession of her residence." Finally, in April 2019, the court appears
18 to have issued an order granting defendants' motion to dismiss Brown's complaint.³

19 Brown's failure to disclose this proceeding creates serious doubts regarding the
20 merit of her claims. It also raises the possibility, if not likelihood, that the claims she
21 wishes to raise in this case—which deal, in part, with payments Brown claims to have
22 remitted to Defendants in September 2018 (Doc. 1-1 at 23), which is before she filed her
23 request for a preliminary injunction in the state-court case—are barred by principles of res

24 ¹ The docket is available at <http://www.superiorcourt.maricopa.gov/docket/CivilCourtCases/caseInfo.asp?caseNumber=CV2018-010815>.

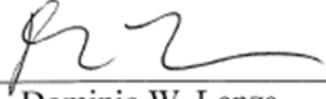
25 ² The minute entry is available at <http://www.courtminutes.maricopa.gov/viewerME.asp?fn=Civil/102018/m8482528.pdf>.

26 ³ The online docket states that, on April 2, 2019, the court issued an order
27 "GRANTING MOTION TO DISMISS FILED BY SHELLPOINT BNYM AND MERS."
28 "Shellpoint" is shorthand for "Shellpoint Mortgage Servicing," which is a trade name used
by Defendant NEWREZ LLC.

1 judicata. *See generally Olivas-Motta v. Whitaker*, 910 F.3d 1271, 1279 (9th Cir. 2018)
2 (“Under the doctrine of claim preclusion, a final judgment forecloses ‘successive litigation
3 of the very same claim, whether or not relitigation of the claim raises the same issues as
4 the earlier suit.’”) (citation omitted); *Cell Therapeutics, Inc. v. Lash Grp., Inc.*, 586 F.3d
5 1204, 1212 (9th Cir. 2009) (“Claim preclusion, often referred to as res judicata, bars any
6 subsequent suit on claims that were raised or could have been raised in a prior action.”).

7 Accordingly, **IT IS ORDERED** that Brown’s request for TRO without notice (Doc.
8 2) is **denied**.

9 Dated this 8th day of May, 2019.

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13 Dominic W. Lanza
14 United States District Judge

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